

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-139377-13

Date:
February 24, 2014

Re:

Legend

Settlor =
Beneficiary =
Child 1 =
Child 2 =
Trust =

State =
State Court =

Date 1 =
Date 2 =
Date 3 =
Trustee =
Charity =

Citation 1 =
Citation 2 =

Dear :

This letter responds a letter dated September 6, 2013, submitted by your authorized representative, requesting a ruling under § 2041(a) of the Internal Revenue Code.

FACTS

On Date 1, Settlor established Trust for the benefit of Beneficiary. On Date 2, Settlor died. Trust is governed by the laws of State. Settlor had two children, Child 1 and Child 2. Beneficiary is a son of Child 1, a nephew of Child 2, and a grandchild of Settlor. Trustee is a trust company.

Section 1 of Trust provides that the trustee may make discretionary distributions of net income to Beneficiary and to Beneficiary's issue. Any net income not distributed to Beneficiary or Beneficiary's issue shall be accumulated and held for future distribution or added to the principal.

Section 2 provides that upon the death of Beneficiary, the trustee shall continue to hold the Trust property or distribute it outright to or among, or in trust for, such of the issue of Child 1 as Beneficiary by his last will appoints. To the extent that Beneficiary does not exercise Beneficiary's power of appointment, in whole or in part, the trustee is to pay the Trust property to Beneficiary's issue living at the time of Beneficiary's death, in equal shares *per stirpes*, or if none, to the issue of Child 1 living at the time of Beneficiary's death, in equal shares *per stirpes*, and if none, to Child 1 if she is living, and if she is not living, to the issue of Child 2 living at the time of Beneficiary's death, in equal shares *per stirpes*, or if none to the then living issue of Settlor in equal shares *per stirpes*, and if none, the trustee is to pay the Trust property to Charity. If Trust property is not effectively disposed of by the foregoing provisions, the trustee is to pay Trust property free of trust to those persons who would be entitled under the laws of State to inherit the personal property of Settlor if he had died intestate, unmarried, and domiciled in State immediately following the death of Beneficiary.

Section 3 provides that if the trustee determines that by reason of changed economic conditions, changes in the tax laws of the United States or of any state, or changes in property rights, the continuance of Trust will not be conducive to the best interests of Beneficiary and of Beneficiary's issue and the other issue of Settlor, the trustee may terminate Trust and pay over Trust property to Beneficiary free of all trust.

Section 9 provides that no interest of any beneficiary of Trust shall be subject to attachment, pass to any trustee in bankruptcy, or be in any fashion whatsoever subject to the control of creditors of the beneficiary.

Section 13 provides that the construction and effect of each and every provision of Trust shall be determined in accordance with the laws of State.

To address the potential ambiguity in Trust as to whether Beneficiary's power of appointment over Trust property is a general power of appointment, Trustee filed a Complaint for Declaratory Judgment in State Court. All necessary parties were notified and gave no objection. A guardian *ad litem* was appointed to represent minor and unborn and unascertained interests. Charity assented in writing to the relief sought, such that State Attorney General was not a necessary party. On Date 3, State Court

issued an order in the matter declaring that the testamentary power granted to Beneficiary under Section 2 of Trust to appoint property to one or more of the issue of Child 1 does not include the power to appoint property to Beneficiary, Beneficiary's estate, Beneficiary's creditors or the creditors of Beneficiary's estate.

RULINGS REQUESTED

1. Beneficiary's testamentary power of appointment over Trust property does not constitute a general power of appointment within the meaning of § 2041(b)(1).

2. The existence, exercise, failure to fully exercise, or partial or complete release of Beneficiary's power to appoint Trust property will not cause the value of Trust property to be included in Beneficiary's gross estate under § 2041(a).

LAW AND ANALYSIS

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2041(a)(2) provides that the value of the gross estate includes the value of all property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, the property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive. For purposes of § 2041(a)(2), the power of appointment is considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

Section 2041(b)(1) provides, with exceptions not relevant here, that the term "general power of appointment" means a power that is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate.

Section 20.2041-1(c)(1) of the Estate Tax Regulations provides that the term "general power of appointment" as defined in § 2041(b)(1) means any power of appointment exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate. Section 20.2041-1(c)(1)(a) provides that a power of appointment is not a general power of appointment if by its terms it is exercisable only in favor of one or more designated persons or classes other than the decedent or his creditors, or the decedent's estate or the creditors of his estate.

In Commissioner v. Estate of Bosch, 387 U.S. 456 (1967), the Supreme Court considered whether a state trial court's characterization of property rights conclusively binds a federal court or agency in a federal estate tax controversy. The Court held that the decision of a state trial court as to an underlying issue of state law is not controlling when applied to a federal statute. Rather, the highest court of a state is the best authority on the underlying substantive rule of state law to be applied to the federal matter. If there is no decision by that court, then the federal authority must apply what it finds to be the state law after giving "proper regard" to the state trial court's determination and to relevant rulings of other courts of the state. Bosch, 387 U.S. at 465.

Under applicable State law, trust instruments are to be construed to ascertain the intention of the settlor from the whole instrument attributing due weight to all its language, and to give effect to that intent unless some positive rule of law forbids. Citation 1, Citation 2. The Date 3 State Court order provides that the testamentary power granted to Beneficiary under Section 2 of Trust to appoint property to one or more of the issue of Child 1 does not include the power to appoint property to Beneficiary, Beneficiary's estate, Beneficiary's creditors or the creditors of Beneficiary's estate. Based on an analysis of facts submitted and the representations made, we conclude that the Date 3 State Court order is consistent with applicable State law as it would be applied by the highest court of State.

Accordingly, based on the facts submitted and the representations made, we conclude: (1) Beneficiary's testamentary power of appointment over of Trust property does not constitute a general power of appointment within the meaning of § 2041(b)(1); and (2) the existence, exercise, failure to fully exercise, or partial or complete release of Beneficiary's power to appoint Trust property will not cause the value of the Trust property to be included in Beneficiary's gross estate under § 2041(a).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes